



General Assembly

Amendment

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LCO No. 6753

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Offered by:

SEN. DUFF, 25th Dist.

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To: Subst. Senate Bill No. 949

File No. 235

Cal. No. 206

"AN ACT CONCERNING MORTGAGE PRACTICES."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective October 1, 2009*) (a) A person commits
4 residential mortgage fraud when, for financial gain and with the intent
5 to defraud, such person: (1) Knowingly makes any material written
6 misstatement, misrepresentation or omission during the mortgage
7 lending process with the intention that a mortgage lender, mortgage
8 correspondent lender or mortgage broker, as defined in section 36a-485
9 of the general statutes, a borrower or any other person that is involved
10 in the mortgage lending process will rely on such written
11 misstatement, misrepresentation or omission; (2) knowingly uses or
12 facilitates the use or attempts to use or facilitate the use of any written
13 misstatement, misrepresentation or omission during the mortgage
14 lending process with the intention that a mortgage lender, mortgage

15 correspondent lender, as defined in section 36a-485 of the general
16 statutes, borrower or any other person that is involved in the mortgage
17 lending process relies on it; (3) receives or attempts to receive proceeds
18 or any other funds in connection with a residential mortgage closing
19 that the person knew or should have known resulted from an act or
20 acts constituting residential mortgage fraud; or (4) conspires with or
21 solicits another to engage in an act or acts constituting residential
22 mortgage fraud.

23 (b) (1) A person who commits a single act of residential mortgage
24 fraud is guilty of a class D felony.

25 (2) A person who commits two or more acts of residential mortgage
26 fraud is guilty of a class C felony.

27 (3) For purposes of this section, (A) "person" means (i) a mortgage
28 broker, mortgage lender, mortgage loan originator or mortgage
29 correspondent lender, as defined in section 36a-485 of the general
30 statutes, or (ii) any other individual who makes more than three
31 individual mortgage loans or who purchases or sells more than three
32 residential properties in a consecutive twelve-month period; (B)
33 "mortgage lending process" means the process through which an
34 individual seeks or obtains a residential mortgage loan, including
35 solicitation, application, origination, negotiation of terms,
36 underwriting, signing, closing and funding of a residential mortgage
37 loan and services provided incident to such mortgage loan, including
38 the appraisal of the residential property; and (C) "residential property"
39 means "residential property" as defined in section 36a-485 of the
40 general statutes.

41 (c) It shall be sufficient in any prosecution for residential mortgage
42 fraud to show that the party accused did the act with the intent to
43 deceive or defraud. It shall be unnecessary to show that any particular
44 person was harmed financially in the transaction or that the person to
45 whom the deliberate misstatement, misrepresentation or omission was
46 made relied upon the misstatement, misrepresentation or omission.

47 For purposes of this section, the residential mortgage fraud is
48 committed: (1) In the county in which the residential real property for
49 which the mortgage loan is being sought is located; (2) in the county in
50 which any act was performed in furtherance of residential mortgage
51 fraud; (3) in any county in which any person alleged to have engaged
52 in an act that constitute residential mortgage fraud had control or
53 possession of any proceeds of such residential mortgage fraud; (4) if a
54 closing occurred, in any county in which the closing occurred; or (5) in
55 any county in which a document containing a deliberate misstatement,
56 misrepresentation or omission is filed with an official registrar.

57 Sec. 2. (NEW) (*Effective October 1, 2009*) (a) All real and personal
58 property of every kind used or intended for use in the course of,
59 derived from or realized through an act of residential mortgage fraud
60 may be subject to a judgment lien in favor of the state to secure any
61 fine levied against a person convicted of mortgage fraud. Such
62 judgment lien shall comply with the provisions of section 52-380a or
63 52-355a of the general statutes and shall be subordinate to any security
64 interest in the property recorded prior to the date on which such lien is
65 recorded.

66 (b) In addition to the penalty prescribed under section 1 of this act,
67 courts may order restitution to any person that has suffered a financial
68 loss due to any act or acts constituting residential mortgage fraud.

69 (c) In the absence of fraud, bad faith or malice, a person shall not be
70 subject to an action for civil liability for filing reports or furnishing
71 other information regarding suspected residential mortgage fraud
72 under section 1 of this act to a regulatory or law enforcement agency.

73 Sec. 3. Subsection (a) of section 36a-760 of the general statutes is
74 repealed and the following is substituted in lieu thereof (*Effective*
75 *October 1, 2009*):

76 (a) As used in this section and sections 36a-760a to 36a-760j,
77 inclusive, as amended by this act:

78 (1) ["Commissioner" means the Banking Commissioner and, with
79 respect to any function of the commissioner, includes any person
80 authorized or designated by the commissioner to carry out that
81 function] "APR" has the same meaning as provided in section 36a-746a;

82 (2) "CHFA loan" means a loan made, insured, purchased, subsidized
83 or guaranteed by the Connecticut Housing Finance Authority;

84 (3) "FHA loan" means a loan made, insured, purchased, subsidized
85 or guaranteed by the Federal Housing Administration;

86 (4) "First mortgage loan" has the same meaning as provided in
87 section 36a-485;

88 (5) "Lender" means any person engaged in the business of the
89 making of mortgage loans who is required to be licensed by the
90 Department of Banking under chapter 668, or their successors or
91 assigns, and shall also mean any bank, out-of-state bank, Connecticut
92 credit union, federal credit union, out-of-state credit union, or an
93 operating subsidiary of a federal bank or a federally chartered out-of-
94 state bank where such subsidiary engages in the business of making
95 mortgage loans, and their successors and assigns, but shall not include
96 any mortgage broker, as defined in this section, or any mortgage loan
97 originator, as defined in section 36a-485;

98 (6) "Mortgage broker" means any person, other than a lender, who
99 (A) for a fee, commission or other valuable consideration, negotiates,
100 solicits, arranges, places or finds a mortgage, and (B) who is required
101 to be licensed by the Department of Banking under chapter 668, or
102 their successors or assigns;

103 (7) "Nonprime home loan" means any loan or extension of credit,
104 excluding an open-end line of credit, and further excluding a reverse
105 mortgage transaction, as defined in 12 CFR 226.33, as amended from
106 time to time:

107 (A) In which the borrower is a natural person;

108 (B) The proceeds of which are to be used primarily for personal
109 family or household purposes;

110 (C) In which the loan is secured by a mortgage upon any interest in
111 one-to-four family residential property located in this state which is, or
112 when the loan is made, intended to be used or occupied by the
113 borrower as a principal residence;

114 (D) In which the principal amount of the loan does not exceed (i)
115 four hundred seventeen thousand dollars for a loan originated on or
116 after July 1, 2008, but before July 1, 2010; and (ii) the then current
117 conforming loan limit, as established from time to time by the Federal
118 National Mortgage Association, for a loan originated on or after July 1,
119 2010;

120 (E) Where the loan is not a CHFA loan; and

121 (F) In which the conditions set forth in clauses (i) and (ii) of this
122 subparagraph apply, subject to any adjustments made pursuant to
123 clause (iii) of this subparagraph:

124 [(i) The difference between the APR for the loan or extension of
125 credit and the yield on United States Treasury securities having
126 comparable periods of maturity is either equal to or greater than (I)
127 three percentage points, if the loan is a first mortgage loan, or (II) five
128 percentage points, if the loan is a secondary mortgage loan. For
129 purposes of such calculation, without regard to whether the loan is
130 subject to or reportable under the provisions of the federal Home
131 Mortgage Disclosure Act, 12 USC 2801 et seq., the difference between
132 the APR and the yield on United States Treasury securities having
133 comparable periods of maturity shall be determined using the same
134 procedures and calculation methods applicable to loans that are
135 subject to the reporting requirement of the federal Home Mortgage
136 Disclosure Act, as those procedures and calculation methods are
137 amended from time to time, provided the yield on United States
138 Treasury securities is determined as of the fifteenth day of the month
139 prior to the application for the loan.]

140 [(ii)] (i) The difference, at the time of consummation, between the
141 APR for the loan and the conventional mortgage rate is either equal to
142 or greater than (I) one and three-quarters percentage points, if the loan
143 is a first mortgage loan, or (II) three and three-quarters percentage
144 points, if the loan is a secondary mortgage loan. For purposes of such
145 calculation, "conventional mortgage rate" means the [most recent
146 daily] contract interest rate on commitments for fixed-rate mortgages
147 published by the board of governors of the federal reserve system in its
148 statistical release H.15, or any publication that may supersede it,
149 during the week preceding the week in which the interest rate for the
150 loan is set.

151 (ii) The difference, at the time of consummation, between the APR
152 for the loan or extension of credit and the average prime offer rate for a
153 comparable transaction, as of the date the interest rate is set, is greater
154 than one and one-half percentage points if the loan is a first mortgage
155 loan or three and one-half percentage points if the loan is a secondary
156 mortgage loan. For purposes of this subparagraph, "average prime
157 offer rate" has the meaning as provided in 12 CFR 226.35, as amended
158 from time to time.

159 (iii) The commissioner shall have the authority, after consideration
160 of the relevant factors, to increase the percentages set forth in clauses
161 (i) and (ii) of this subparagraph. The authority of the commissioner,
162 and any increases or decreases made under this clause, shall expire on
163 August 31, [2009] 2010. For purposes of this clause, the relevant factors
164 to be considered by the commissioner shall include, but not be limited
165 to, the existence and amount of increases in fees or charges in
166 connection with purchases of mortgages by the Federal National
167 Mortgage Association or the Federal Home Loan Mortgage
168 Corporation and increases in fees or charges imposed by mortgage
169 insurers and the impact, including the magnitude of the impact, that
170 such increases have had, or will likely have, on APRs for mortgage
171 loans in this state. When considering such factors, the commissioner
172 shall focus on those increases that are related to the deterioration in the
173 housing market and credit conditions. The commissioner may refrain

174 from increasing such percentages if it appears that lenders are
175 increasing interest rates or fees in bad faith or if increasing the
176 percentages would be contrary to the purposes of sections 36a-760 to
177 36a-760f, inclusive, as amended by this act. No increase authorized by
178 the commissioner to a particular percentage shall exceed one-quarter
179 of one percentage point, and the total of all increases to a particular
180 percentage under this clause shall not exceed one-half of one
181 percentage point. No increase shall be made unless: (I) The increase is
182 noticed in the Banking Department Bulletin and the Connecticut Law
183 Journal, and (II) a public comment period of twenty days is provided.
184 Any increase made under this clause shall be reduced proportionately
185 when the need for the increase has diminished or no longer exists. The
186 commissioner, in the exercise of his discretion, may authorize an
187 increase in the percentages with respect to all loans or just with respect
188 to a certain class or classes of loans.

189 (8) "Open-end line of credit" means a mortgage extended by a
190 lender under a plan in which: (A) The lender reasonably contemplates
191 repeated transactions; (B) the lender may impose a finance charge from
192 time to time on an outstanding unpaid balance; (C) the amount of
193 credit that may be extended to the consumer during the term of the
194 plan, up to any limit set by the lender, is generally made available to
195 the extent that any outstanding balance is repaid; and (D) none of the
196 proceeds of the open-end line of credit are used at closing to (i)
197 purchase the borrower's primary residence, or (ii) refinance a
198 mortgage loan that had been used by the borrower to purchase the
199 borrower's primary residence;

200 (9) "Residential property" has the same meaning as provided in
201 section 36a-485;

202 (10) "Secondary mortgage loan" has the same meaning as provided
203 in section 36a-485.

204 Sec. 4. Section 36a-760e of the general statutes is repealed and the
205 following is substituted in lieu thereof (*Effective October 1, 2009*):

- 206 (a) A lender shall not offer a nonprime home loan that contains:
- 207 (1) A prepayment penalty, except that this prohibition shall not
208 apply to FHA loans;
- 209 [(2) A provision that increases the interest rate after default other
210 than a failure to comply with a provision to maintain an automatic
211 electronic payment feature where that maintenance provision has been
212 provided in return for an interest rate reduction and the increase is no
213 greater than that reduction;]
- 214 [(3)] (2) A provision requiring a borrower, whether acting
215 individually or on behalf of others similarly situated, to assert any
216 claim or defense in a nonjudicial forum that: (A) Utilizes principles
217 which are inconsistent with the law as set forth in the general statutes
218 or common law; (B) limits any claim or defense the borrower may
219 have; or (C) is less convenient, more costly or more dilatory for the
220 resolution of a dispute than a judicial forum established in this state
221 where the borrower may otherwise properly bring a claim or defense;
- 222 (3) For a loan with a term of less than seven years, a payment
223 schedule with regular periodic payments that when aggregated do not
224 fully amortize the outstanding principal balance, except that this
225 limitation does not apply to a loan with maturities of less than one
226 year if the purpose of the loan is a bridge loan, as used in 12 CFR
227 226.32, as amended from time to time, connected with the acquisition
228 or construction of a dwelling intended to become the borrower's
229 principal dwelling;
- 230 (4) A payment schedule with regular periodic payments that cause
231 the principal balance to increase;
- 232 (5) A payment schedule that consolidates more than two periodic
233 payments and pays them in advance from the proceeds, unless such
234 payments are required to be escrowed by a governmental agency;
- 235 (6) Default charges in excess of five per cent of the amount in

236 default; or

237 (7) A call provision that permits the lender, in its sole discretion, to
238 accelerate the indebtedness. This prohibition shall not apply when
239 repayment of the loan is accelerated by bona fide default, pursuant to a
240 due-on-sale clause provision or pursuant to another provision of the
241 loan agreement unrelated to the payment schedule, including, but not
242 limited to, bankruptcy or receivership.

243 (b) If a nonprime home loan contains a provision [which] that
244 violates [subdivision (1), (2) or (3) of] subsection (a) of this section, that
245 provision shall be void and unenforceable.

246 Sec. 5. Section 36a-489 of the general statutes is amended by adding
247 subsection (c) as follows (*Effective from passage*):

248 (NEW) (c) Notwithstanding the provisions of this section, the
249 commissioner may deem an application for a license as a mortgage
250 lender, mortgage correspondent lender, mortgage broker or mortgage
251 loan originator abandoned if the applicant fails to respond to any
252 request for information required under sections 36a-485 to 36a-498a,
253 inclusive, as amended by this act, or the regulations adopted pursuant
254 to said sections. The commissioner shall notify the applicant in writing
255 that if such information is not submitted within sixty days the
256 application shall be deemed abandoned. An application filing fee paid
257 prior to the date an application is deemed abandoned pursuant to this
258 subsection shall not be refunded. Abandonment of an application
259 pursuant to this subsection shall not preclude the applicant from
260 submitting a new application for a license under said sections 36a-485
261 to 36a-498a, inclusive.

262 Sec. 6. Section 36a-498 of the general statutes is amended by adding
263 subsection (h) as follows (*Effective October 1, 2009*):

264 (NEW) (h) No mortgage lender or mortgage correspondent lender
265 shall include in a mortgage loan a provision that increases the interest
266 rate as a result of a default other than a failure to comply with a

267 provision to maintain an automatic electronic payment feature where
268 such maintenance provision has been provided in return for an interest
269 rate reduction and the increase is no greater than such reduction.

270 Sec. 7. Subsection (b) of section 36a-498a of the general statutes is
271 repealed and the following is substituted in lieu thereof (*Effective from*
272 *passage*):

273 (b) (1) No mortgage lender or mortgage correspondent lender
274 making a secondary mortgage loan may (A) charge, impose or cause to
275 be paid, directly or indirectly, in connection with any secondary
276 mortgage loan transaction, prepaid finance charges that exceed in the
277 aggregate eight per cent of the principal amount of the loan, or (B)
278 include in the loan agreement, under which prepaid finance charges
279 have been assessed, any provision that permits the mortgage lender or
280 mortgage correspondent lender to demand payment of the entire loan
281 balance prior to the scheduled maturity, except that such loan
282 agreement may contain a provision that permits the mortgage lender
283 or mortgage correspondent lender to demand payment of the entire
284 loan balance if any scheduled installment is in default for more than
285 sixty days or if any condition of default set forth in the mortgage note
286 exists.

287 (2) Any mortgage lender [,] or mortgage correspondent lender [or
288 mortgage broker] who fails to comply with the provisions of this
289 subsection shall be liable to the borrower in an amount equal to the
290 sum of: (A) The amount by which the total of all prepaid finance
291 charges exceeds eight per cent of the principal amount of the loan; (B)
292 eight per cent of the principal amount of the loan or two thousand five
293 hundred dollars, whichever is less; and (C) the costs incurred by the
294 borrower in bringing an action under this subsection, including
295 reasonable attorney's fees, as determined by the court, provided no
296 such mortgage lender [,] or mortgage correspondent lender [or
297 mortgage broker] shall be liable for more than the amount specified in
298 this subsection in a secondary mortgage loan transaction involving
299 more than one borrower.

300 Sec. 8. Section 36a-746c of the general statutes is repealed and the
301 following is substituted in lieu thereof (*Effective from passage*):

302 A high cost home loan shall not provide for or include the
303 following:

304 (1) For a loan with a term of less than seven years, a payment
305 schedule with regular periodic payments that when aggregated do not
306 fully amortize the outstanding principal balance, except that this
307 limitation does not apply to a loan with maturities of less than one
308 year if the purpose of the loan is a bridge loan, as used in 12 CFR
309 226.32, as amended from time to time, connected with the acquisition
310 or construction of a dwelling intended to become the borrower's
311 principal dwelling;

312 (2) A payment schedule with regular periodic payments that cause
313 the principal balance to increase;

314 (3) A payment schedule that consolidates more than two periodic
315 payments and pays them in advance from the proceeds, unless such
316 payments are required to be escrowed by a governmental agency;

317 [(4) An increase in the interest rate after default or default charges in
318 excess of five per cent of the amount in default;]

319 [(5)] (4) A refund calculated by a method less favorable than the
320 actuarial method, as defined by Section 933(d) of the Housing and
321 Community Development Act of 1992, 15 USC 1615(d), as amended
322 from time to time, for rebates of interest arising from a loan
323 acceleration due to default;

324 [(6)] (5) A prepayment penalty;

325 [(7)] (6) A waiver of participation in a class action or a provision
326 requiring a borrower, whether acting individually or on behalf of
327 others similarly situated, to assert any claim or defense in a nonjudicial
328 forum that: (A) Utilizes principles which are inconsistent with the law
329 as set forth in the general statutes or common law; (B) limits any claim

330 or defense the borrower may have; or (C) is less convenient, more
 331 costly or more dilatory for the resolution of a dispute than a judicial
 332 forum established in this state where the borrower may otherwise
 333 properly bring a claim or defense; or

334 [(8)] (7) A call provision that permits the lender, in its sole
 335 discretion, to accelerate the indebtedness. This prohibition shall not
 336 apply when repayment of the loan is accelerated by bona fide default,
 337 pursuant to a due-on-sale clause provision, or pursuant to another
 338 provision of the loan agreement unrelated to the payment schedule
 339 including, but not limited to, bankruptcy or receivership."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	New section
Sec. 2	<i>October 1, 2009</i>	New section
Sec. 3	<i>October 1, 2009</i>	36a-760(a)
Sec. 4	<i>October 1, 2009</i>	36a-760e
Sec. 5	<i>from passage</i>	36a-489
Sec. 6	<i>October 1, 2009</i>	36a-498
Sec. 7	<i>from passage</i>	36a-498a(b)
Sec. 8	<i>from passage</i>	36a-746c